

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER DE LA VEGA,

Defendant.

Case No. 18-CR-40-JPS

**ORDER**

On September 11, 2018, Defendant filed a motion to suppress his statements during a police interrogation as a violation of his *Miranda* rights. (Docket #38); see *United States v. Borostowski*, 775 F.3d 851, 859 (7th Cir. 2014). On October 18, 2018, Magistrate Judge William E. Duffin issued a recommendation to this Court that it should grant Defendant's motion to suppress. (Docket #42). Magistrate Duffin noted that the officers' tone during the interrogation would factor into his assessment of whether Defendant's rights were violated. *Id.* at 16. Although the interrogation was audio recorded, the recording was not provided to Magistrate Duffin.

On October 23, 2018, the government submitted an objection to the recommendation. (Docket #43). Along with the objection, the government provided the audio recording of the interrogation. It did so "to remedy [its] omission" before the magistrate. *Id.* at 2. The Court rejects the government's approach. It is the policy of this branch of the Court that, when a motion is before a magistrate judge for the issuance of a recommendation, the parties must include all relevant evidence and legal argument they wish to offer in their submissions to the magistrate. Anything not so presented will be deemed waived and will not be considered by this Court. In other words,

this Court will not hear an objection to a magistrate's recommendation on a ground that was not presented, in full, to the magistrate in the first instance. Here, the government's "omission" means that the case must be returned to Magistrate Duffin for the issuance of an updated recommendation upon consideration of the audio recording.<sup>1</sup>

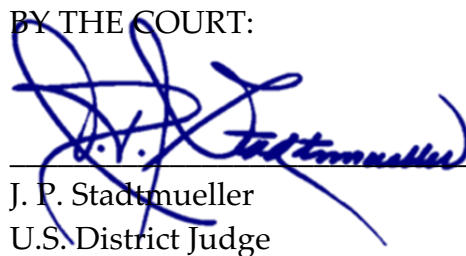
Accordingly,

**IT IS ORDERED** that the government's objection to Magistrate Judge William E. Duffin's Report and Recommendation (Docket #42) be and the same is hereby **STRICKEN**; and

**IT IS FURTHER ORDERED** that this matter is referred back to Magistrate Judge William E. Duffin for the issuance of an updated Report and Recommendation, in light of the new evidence presented by the government.

Dated at Milwaukee, Wisconsin, this 25th day of October, 2018.

BY THE COURT:



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J. P. Stadtmueller  
U.S. District Judge

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<sup>1</sup>The Court notes a further problem with the government's brief. It states that the brief "wholly incorporate[s]" the brief it presented to Magistrate Duffin. (Docket #43 at 1); *see also id.* at 10 ("The United States asks this Court to review its initial memorandum's factor-by-factor analysis of eight separate facts making up part of the totality of the circumstances, all of which argue for a finding of no custody."). This is not an appropriate form of argument in an objection to a recommendation. Objections to a magistrate's recommendation must be specific to the issues the objector believes were wrongly decided, tailored to the recommendation under review. The objector cannot simply re-submit precisely the same arguments to this Court in an effort to obtain a different result. Even if the objector disagrees with every holding of the recommendation, they must explain that in their briefing to this Court without reliance on other briefing.